

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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AARHUS MANSOURIAN; LAUREN
MANCUSO; NANCY NIEN-LI
CHIANG; CHRISTINE WING-SI NG;
and all those similarly
situated,

Plaintiffs,

v.

NO. CIV. S-03-2591 FCD/PAN

MEMORANDUM AND ORDER

BOARD OF REGENTS OF THE
UNIVERSITY OF CALIFORNIA
at DAVIS; LAWRENCE "LARRY"
VANDERHOEF; GREG WARZECKA;
PAM GILL-FISHER; ROBERT
FRANKS; and LAWRENCE SWANSON,

Defendants.

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1 This matter is before the court on plaintiffs' motion to
2 modify the pretrial scheduling order, pursuant to Fed. R. Civ. P.
3 16(b).¹ Plaintiffs seek to extend the current dates² for
4 disclosure of experts, close of discovery, dispositive motions,
5 the final pretrial conference, and trial by approximately two
6 months. Defendants partially oppose the motion. They agree to
7 an extension of the dates for close of discovery, dispositive
8 motions, and the final pretrial conference,³ but oppose any
9 extension of the dates for disclosure of experts and trial.
10 Accordingly, the court only discusses herein whether plaintiffs
11 have demonstrated "good cause" for an extension of the dates for
12 disclosure of experts and trial.

13 In that regard, plaintiffs seek modification of the
14 scheduling order to continue the disclosure date for experts from
15 June 1, 2005⁴ to August 1, 2005 (with disclosure of rebuttal

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17 ¹ Because oral argument will not be of material
18 assistance, the court orders this matter submitted on the briefs.
E.D. Cal. L.R. 78-230(h).

19 ² The pretrial scheduling order in this case has been
20 amended by the court and/or the parties, by stipulation, several
21 times, most recently by stipulation and order, filed February 25,
22 2005. That order set the dates as follows: (1) initial
23 disclosure of experts - June 1, 2005; (2) disclosure of rebuttal
24 experts - June 24, 2005; (3) completion of discovery - July 22,
25 2005; (4) dispositive motion cut-off - September 9, 2005; (5)
26 final pretrial conference - November 18, 2005; and (6) trial -
27 January 24, 2006.

28 ³ The court notes that defendants propose slightly
different dates for the extension of these deadlines than
plaintiffs.

⁴ As set forth above, per the February 25, 2005
stipulation and order, expert disclosures were due on June 1,
2005. On that date, the court granted plaintiffs' ex parte
application for an order shortening time to hear the instant
motion, thus relieving plaintiffs, at least temporarily, of their
obligation to file their expert disclosures. (Minute Order,

1 experts due September 1, 2005, rather than June 24, 2005), and to
2 continue trial from January 24, 2006 to an available date in
3 February 2006. A pretrial order "shall not be modified except
4 upon a showing of good cause." Fed. R. Civ. P. 16(b). The
5 district court may modify the pretrial schedule "if it cannot
6 reasonably be met despite the diligence of the party seeking the
7 extension." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
8 609 (9th Cir. 1992) (quoting Fed. R. Civ. P. 16, advisory
9 committee's notes (1983 amendment)). The "good cause" standard
10 set forth in Rule 16 primarily focuses upon the diligence of the
11 party requesting the amendment. "Although the existence or
12 degree of prejudice to the party opposing the modification might
13 supply additional reasons to deny a motion, the focus of the
14 inquiry is upon the moving party's reasons for seeking
15 modification." Id.

16 Here, plaintiffs first requested that defendants stipulate
17 to the instant extension of dates on May 16, 2005. They
18 continued to request the extension during a week of depositions,
19 on May 16-24, 2005, and thereafter by phone; however, lead
20 counsel for defendants would not respond. When no response was
21 received, plaintiffs were forced to file their ex parte
22 application to shorten time to hear this motion.

23 Defendants maintain that plaintiffs were not diligent in
24 seeking relief as they filed their motion on the expert
25 disclosure deadline. Nevertheless, based on the parties' prior
26 agreements with respect to extensions of the scheduling order,

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28 filed June 1, 2005.) Defendants filed their expert disclosures
that same day.

1 plaintiffs reasonably continued to try to obtain defendants'
2 stipulation, believing that a joint resolution could be reached
3 as it had two times before. (Stip. & Order, filed Oct. 26, 2004
4 and Feb. 25, 2005.)

5 Moreover, during this same period of time, the parties were
6 engaged in extensive discovery. Defendants were well aware of
7 plaintiffs' objection to defendants' recent, delayed and,
8 according to plaintiffs, deficient document production.

9 Plaintiffs base their request for an extension of time to
10 disclose experts, largely on the basis of the need to obtain
11 necessary discovery, some of which defendants agree must be
12 conducted. While the court is not in a position to adjudge the
13 merits of plaintiffs' allegations regarding the purported
14 deficiencies in defendants' recent discovery responses,
15 plaintiffs have demonstrated herein that certain, further
16 discovery is necessary and would impact the type of experts
17 plaintiffs disclose. As such, plaintiffs have demonstrated "good
18 cause" for the extension.

19 The court also notes that, importantly, the requested
20 extension is limited. Indeed, plaintiffs request only a two
21 month extension of the deadline for disclosure of experts and
22 their proposed schedule would result in just a one month
23 continuation of the trial date.⁵ Defendants assert that they
24 would be prejudiced by the extension because they have already
25 disclosed their experts, and plaintiffs would have the benefit,

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27 ⁵ However, as reflected in the schedule below, the
28 court's calendar could not accommodate a February 2006 trial
date.

over the next two months, of that information. Any prejudice resulting from this fact is minimal. Defendants will have the opportunity to amend their disclosure, in full or in part, prior to the new deadline. Additionally, defendants are not prejudiced by virtue of this brief extension of the relevant dates. This is a complicated case which has already involved extensive discovery (some 50 depositions have been taken and over 50,000 documents produced). Defendants admit that still further discovery is needed. Now, both parties will be given additional time to complete and obtain necessary discovery and to assess that discovery for purposes of obtaining relevant experts. A short continuation of the trial date, some seven months in advance, is certainly are not prejudicial to any party.

Accordingly, the court HEREBY AMENDS the pretrial scheduling order in this case, originally filed June 9, 2004, and subsequently amended on June 30, 2004, October 27, 2004, and February 25, 2005, as follows:

<u>Initial Disclosure of Experts:</u>	August 1, 2005
<u>Disclosure of Rebuttal Experts:</u>	September 1, 2005
<u>Discovery Cut-Off:</u>	October 28, 2005
<u>Last Date for Hearing on a Dispositive Motion:</u>	January 13, 2006
<u>Final Pretrial Conference:</u>	March 17, 2006 at 1:30 p.m.

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1 Trial:

May 2, 2006 at
9:00 a.m.

2 IT IS SO ORDERED.

3 DATED: June 14, 2005

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5 /s/ Frank C. Damrell Jr.
6 FRANK C. DAMRELL, Jr.
7 UNITED STATES DISTRICT JUDGE
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